

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:00CV249

**WEAVER, BENNETT & BLAND,)
P.A.,)**

Plaintiff,)

Vs.)

SPEEDY BUCKS, INC., *et al.*,)

Defendants.)

ORDER

THIS MATTER is before the Court on the limited remand from the United States Fourth Circuit Court of Appeals. **Order, filed April 21, 2006.**

During the pendency of the appeal from the jury verdict in this matter, the Plaintiff/Appellee filed a motion to dismiss the appeal on the ground that the Defendants/Appellants had paid the judgment ordered herein. The Plaintiff/Appellee claimed in its pleadings before the Circuit that the parties had an oral agreement to dismiss the appeal once the judgment was paid.

The Defendants/Appellants responded to the motion that the only agreement between the parties was reduced to written form in the assignment. And, they argued to the Circuit that the payment of the

judgment had not rendered the appeal moot and that they had never agreed, orally or in writing, to dismiss the appeal upon payment of the judgment. The payment, they state, which was made by Resolution Settlement Corporation, was made only to stop collection procedures against the individual Defendants.

Because this issue concerns matters outside the record which is before the Fourth Circuit, the Court remanded this action “for the limited purpose of making findings of fact and conclusions of law on the issue of whether the parties entered into a binding agreement to dismiss the appeal upon payment of the judgment at issue.” *Id.*, at 2. The Court will provide the parties with an opportunity to advise the Court of the manner in which they wish to proceed.

IT IS, THEREFORE, ORDERED that on or before **MAY 22, 2006**, the parties shall advise the Court of their respective positions as to the following issues: (1) whether any period of discovery is necessary; (2) whether a hearing in this matter would be rendered unnecessary by discovery; and (3) whether the parties desire to present further legal argument or rest on the pleadings filed with the Fourth Circuit and furnished to this Court.

Signed: May 4, 2006

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

